

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JERRY WILDER,)	CASE NO. 1:07 CV 745
)	
Petitioner,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
STUART HUDSON, WARDEN,)	Magistrate Judge David S. Perelman
)	
Respondent.)	<u>MEMORANDUM OPINION</u>

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge David S. Perelman. The Report and Recommendation (Document #10) is ADOPTED by this Court. Respondent's Motion to Dismiss (Document #9) is hereby GRANTED and Petitioner's Petition for Habeas Corpus pursuant to 28 U.S.C. § 2254 (Document #1) is hereby DENIED.

On October 3, 2001, Petitioner entered pleas of guilty in four separate cases in the Cuyahoga County Court of Common Pleas.¹ An agreed term of twelve years imprisonment was imposed. Petitioner filed his Petition for Habeas Corpus on March 14, 2007. On July 19, 2007,

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In Case Nos. CR101853, CR408898, CR411014, Petitioner plead guilty to single counts of possession of drugs. and in Case No. 411484, the plea was to one count of trafficking in cocaine with juvenile specifications. In each of those cases, other counts were nolle pursuant to the plea agreement.

Respondent filed a Motion to Dismiss arguing that the Petition is time-barred pursuant to the one-year limitation period of 28 U.S.C. § 2244(d). Petitioner has not filed a response to Respondent's Motion to Dismiss.

The Magistrate Judge issued a Report and Recommendation on August 20, 2007. The Magistrate Judge recommends that Respondent's Motion be granted and that the Petition be dismissed on the basis that it is time-barred. The Magistrate Judge discussed that although Petitioner's want of opposition alone could call for granting Respondent's Motion to Dismiss, the Petition should be dismissed as it was filed more than five years and five months after Petitioner's pleas of guilty entered October 3, 2001. Petitioner has not filed any objections to the Report and Recommendation.

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made: it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a

district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

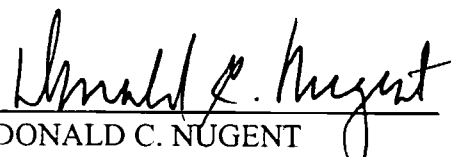
The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings." Notwithstanding the foregoing, the Court has reviewed the Report and Recommendation of the instant case *de novo*. See *Delgado v. Bowen*, 782 F.2d 79 (7th Cir. 1986).

Conclusion

The Court has reviewed the Report and Recommendation and finds it to be well-reasoned and correct. The Court agrees with, and adopts, the findings and conclusions of Magistrate Judge Perelman as its own. The Court hereby ADOPTS the Report and Recommendation of Magistrate Judge Perelman (Document #10) in its entirety. Respondent's Motion to Dismiss (Document #9) is hereby GRANTED. Petitioner's Petition for Habeas Corpus (Document #1) is DENIED.

Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b).

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: September 13, 2007